

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 25, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2059-CR

Cir. Ct. No. 2013CT544

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JESSE A. VAN CAMP,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: GREGORY B. GILL, JR., Judge. *Affirmed.*

¶1 MANGERSON, J.¹ Jesse Van Camp appeals a judgment of conviction for operating while intoxicated, fourth offense. Van Camp argues the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

circuit court erred by denying his suppression motion because the officer lacked reasonable suspicion to stop his vehicle. We disagree and affirm.

BACKGROUND

¶2 At the suppression hearing, officer Scott Sweetman testified that, on March 21, 2013, at approximately 2:05 a.m., he was near a bar that had several vehicles in its parking lot. Sweetman stated “bar time” occurred five minutes earlier and, based on the number of vehicles in the parking lot, Sweetman “wanted also to see if they were serving alcohol after hours.”

¶3 Sweetman drove through the parking lot, shined his spotlight into the bar’s front window, and saw several people inside. He also observed two males immediately go around a corner to avoid being seen.

¶4 Sweetman then left, “drove around the general vicinity for several minutes,” returned, and parked across the street on the opposite corner of the bar. At approximately 2:17 a.m., Sweetman observed a person emerge from the bar, get into one of the parked vehicles, and leave the parking lot.

¶5 As the vehicle, which was the first one that left the parking lot, passed Sweetman, Sweetman decided to follow it. Sweetman turned behind the vehicle and began following it east on County Highway JJ. After Sweetman followed the vehicle for approximately 100 yards, the vehicle turned left, or north, on Sleepy Hollow Road, which was the first possible road the vehicle could turn down. Sweetman explained Sleepy Hollow Road is a cul-de-sac that only goes north from County Highway JJ; there is a residential driveway immediately south of the intersection.

¶6 After the vehicle turned on Sleepy Hollow Road, Sweetman observed the vehicle turn immediately into another residential driveway. Sweetman believed the driver lived at that location, and Sweetman passed Sleepy Hollow Road. However, as soon as he passed the road, Sweetman observed in his rear-view mirror the vehicle begin to back out of the driveway. At that point, Sweetman thought the vehicle was avoiding him. However, on cross-examination, Sweetman conceded the vehicle may have been simply turning around.

¶7 Sweetman made an immediate U-turn on County Highway JJ and returned to Sleepy Hollow Road. When Sweetman turned onto Sleepy Hollow Road, the vehicle was now facing south toward County Highway JJ and Sweetman observed it pull over to the right shoulder. Sweetman's squad car and the vehicle were momentarily side-by-side. Sweetman then stopped his squad car to wait and see what the vehicle's driver was going to do.

¶8 The vehicle drove straight through the intersection of County Highway JJ and into the residential driveway directly south of the intersection. Sweetman turned around, and stopped the vehicle. Van Camp was driving. Ultimately, Van Camp was arrested and charged with operating while intoxicated.

¶9 The circuit court concluded Sweetman had reasonable suspicion to stop Van Camp's vehicle. In support of its determination, the court noted

the hours in which this took place, the fact that there was a, what I'll categorize, evasive maneuver away from the window [in the bar], and then again the driving which was concluded to be or determined to be somewhat evasive in nature when looked at in conjunction with the totality of the circumstances.

Van Camp appeals.

DISCUSSION

¶10 A police officer may conduct a traffic stop when the officer has grounds to “reasonably suspect that a crime or traffic violation has been or will be committed.” *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether reasonable suspicion exists is a question of constitutional fact. *Id.*, ¶10. We uphold the circuit court’s factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶11 Reasonable suspicion exists when, under the totality of the circumstances, the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect the individual has committed, was committing, or is about to commit a crime or traffic violation. *Id.*, ¶23. Such a stop must be based on more than an “‘officer’s inchoate and unparticularized suspicion or hunch[.]’” *Id.* (citation omitted). Instead, the officer “‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *Id.* (citation omitted). “[I]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.” *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶12 Additionally, nothing in the Fourth Amendment requires that a police officer’s suspicions relate to a particular criminal activity. *Id.* at 86. Indeed, stops have been upheld and deemed reasonable based on the defendant’s police avoidance behavior without any specifically observed criminal activity. *Id.*; *see also, e.g., State v. Williamson*, 113 Wis. 2d 389, 402, 335 N.W.2d 814 (1983)

(stop upheld where two men appeared startled and stared at police officers sitting in their squad car and then turned and walked away); *State v. Williamson*, 58 Wis. 2d 514, 517-18, 206 N.W.2d 613 (1973) (stop upheld where defendant drove a circuitous route in downtown Milwaukee and pulled his car over to the curb in response to approach of marked squad car). The reasoning is that such behavior, although not illegal, is indicative of a guilty conscience and gives rise to reasonable suspicion that some sort of wrongful activity may be afoot such that the officer may temporarily detain the individual for the purpose of inquiry. *Anderson*, 155 Wis. 2d at 86, 88.

¶13 Van Camp argues Sweetman lacked reasonable suspicion to stop his vehicle. He argues Sweetman conceded his stop was based on a hunch and, even if Sweetman reasonably suspected something was amiss at the bar, that belief did not transfer to reasonable suspicion to conduct a traffic stop.

¶14 At the outset, we reject Van Camp's assertion that Sweetman conceded his stop was based on a hunch. This concession was made on cross-examination when Sweetman agreed that, after the vehicle backed out of the first driveway, the vehicle may simply have been turning around and not trying to avoid him. This concession does not account for the fact that, after the vehicle backed out of the first driveway, it pulled over when Sweetman turned onto Sleepy Hollow Road and then immediately drove into another residential driveway. More importantly, even if Sweetman had testified his stop was based entirely on a hunch, an officer's subjective belief is immaterial for a reasonable suspicion analysis. See *State v. Buchanan*, 178 Wis. 2d 441, 447 n.2, 504 N.W.2d 400 (Ct. App. 1993) ("[I]t is the circumstances that govern, not the officer's subjective belief.").

¶15 We now turn to whether Sweetman had reasonable suspicion to stop Van Camp's vehicle. Admittedly, this is a close case. However, examining the facts of the present case, along with all reasonable inferences that may be drawn from them, we conclude Van Camp's behavior, which the circuit court found to be "somewhat evasive," afforded Sweetman reasonable suspicion to stop Van Camp's vehicle.

¶16 Specifically, this case began when Sweetman observed two males in a bar after "bar time" try to avoid being seen by him. While there is no indication that Van Camp was one of those individuals, it was reasonable for Sweetman to suspect from this behavior that there was something amiss at the bar. Sweetman then observed Van Camp emerge from the bar at 2:17 a.m. When Sweetman began following Van Camp, Van Camp immediately turned on the first available road and turned into a residential driveway. After Sweetman passed the road, Sweetman observed Van Camp exit the driveway. When Sweetman turned around and turned onto the road, Van Camp pulled his vehicle over. Sweetman's vehicle was then momentarily side-by-side with Van Camp's, and Sweetman stopped his vehicle, waiting to see what Van Camp was going to do. Van Camp then crossed the intersection and traveled straight into another residential driveway. These specific and articulable facts support the circuit court's finding that Van Camp's driving was "somewhat evasive," or an attempt to avoid Sweetman. Additionally, it is reasonable to infer from Van Camp's actions of pulling into two residential driveways after 2:00 a.m. for no apparent purpose that some sort of wrongful activity was afoot. We conclude Sweetman had reasonable suspicion to temporarily stop Van Camp to investigate. *See Anderson*, 155 Wis. 2d at 84; *see also Williamson*, 113 Wis. 2d at 402; *Williamson*, 58 Wis. 2d at 518.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

